

**STANDARD FORM OF CONTRACT BETWEEN DEQ AND CONTRACTOR
FOR WEED CONTROL SERVICES
DEQ REMEDIATION DIVISION
DEQ AGENCY CONTRACT NO. 414055**

This CONTRACT is between the CONTRACTOR (as stated herein below) and the STATE OF MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ").

WITNESSETH, that Contractor and DEQ for the consideration hereinafter named agree as follows:

ARTICLE 1. SCOPE OF WORK. Contractor shall perform weed control services on an as-needed basis. The specific tasks to be assigned will be designated in task orders executed subsequent to or concurrent with this Contract. The weed control services to be provided and the budgets for such services shall be based upon RFP 414055 Attachment 1 - Price List (and any approved modification thereto), and as mutually agreed to in each task order. Contractor shall apply the specified herbicide at the application rate designated for each area. Total acreages of areas requiring chemical weed control will be described in each applicable task order. DEQ will identify the acreage on which the work will be conducted by Contractor. Some areas will require herbicide application to the entire area, whereas only portions of others will require treatment. Contractor will be responsible for keeping accurate records of the acreage treated for billing purposes.

ARTICLE 2. THE CONTRACT TERM. Contractor shall not commence work under this Contract (or any applicable task order) before the Effective Date of this Contract, which shall be the latter of the two dates of signature. This Contract shall remain in effect for an initial period of one (1) year from the Effective Date, unless the Contract is terminated or modified as provided herein. At its option, DEQ may decide to extend this Contract in one-year increments. The total period of performance shall not exceed any time limits imposed by statute.

ARTICLE 3. THE CONTRACT SUM. As mutually agreed to in each task order, DEQ shall pay Contractor according to the unit prices in RFP 414055 Attachment 1 – Price List for initial mobilization, additional mobilization (if necessary) and per acre for the actual number of acres where herbicides are applied in accordance with the specifications. Area measurements will be made by DEQ or by agreement with Contractor.

All costs in connection with the Work, including, but not limited to, the furnishing of materials, equipment, tools, supplies, securing necessary insurance and licenses, and providing all necessary labor and supervision to fully complete the Work, shall be included in the unit prices contained in RFP 414055 Attachment 1 – Price List (and any approved modification thereto). No item that is required for the proper and successful completion of the work will be paid for outside or in addition to these unit prices.

ARTICLE 4. AUTHORIZATION TO PROCEED/TASK ORDERS. Contractor may not begin work on any services under this Contract until receipt of written authorization from DEQ. This authorization shall be in the form of a task order agreed to by DEQ and Contractor containing:

1. A preamble referencing DEQ, Contractor, the project or operable unit (if applicable), task, and this Contract.
2. A description of the services to be provided (nature, scope, and extent of work to be performed), the deliverable to be provided, time frame for performance, total cost of the services, and payment provisions in accordance with this Contract.
3. Any special conditions not covered in this Contract.
4. Appropriate attachments.
5. Signatures by authorized representatives of both parties.
6. A completed DEQ Cost or Price Summary (EPA Form 5700-41 or equivalent, as applicable).

Contractor costs associated with developing and negotiating each task order and developing the budget estimate for each task order will be borne by the Contractor.

The budget specified in each task order shall be the maximum amount for which DEQ is liable under that task order. DEQ shall have no obligation to pay Contractor for work that exceeds the budget authorized at the time the work is performed. Any increase in a task order budget must be authorized in a written modification to the task order, signed by DEQ and Contractor.

ARTICLE 5. PAYMENT FOR SERVICES. Payment for Contractor's services will be made within the time periods specified by state law, after receipt by DEQ of a properly completed invoice, according to the following process:

1. Contractor shall submit a monthly billing statement (invoice) to DEQ for weed control services performed under this Contract. The billing statement shall include a separate invoice for each task order executed under this Contract. Invoices shall identify actual costs incurred during the preceding billing period based on RFP 414055 Attachment 1- Price List;
2. The monthly billing statement (invoice) shall contain the following statement of the expiration date of the task order: "This task order shall expire on [date]."
3. Invoices must itemize costs in sufficient detail to allow evaluation by DEQ of the reasonableness of the work and the charges. Itemized information shall include, without limitation the Contract number, task order number, invoice number, the site or project name, the billing period, and a general description of the services provided during the period.
4. The monthly billing statement (invoice) shall also include the signed certificate of Contractor's authorized and responsible accounting or financial manager stating: "This invoice is approved for (amount). I certify that it is mathematically and clerically correct, and that it is a legal, proper, and necessary charge in accordance with the Contract".

5. DEQ shall have the right at any time to request additional documentation concerning Contractor costs, including any records required to be kept by Contractor. DEQ may dispute all or a portion of any billing statement, and may withhold payment until the dispute is resolved to DEQ's satisfaction. DEQ will notify Contractor in writing of any disputed amounts in Contractor's invoices. In the event of disputed billing, only that portion of payment disputed shall be withheld, and any undisputed portion shall be paid in accordance with the payment provisions outlined in this Section.
6. Contractor understands and agrees that DEQ is dependent upon federal and state appropriations for its funding and that actions by Congress or the state legislature may preclude funding this Contract (and/or any task order) through the Contract Term. In such event, the parties agree that DEQ may set a new completion date or terminate the Contract (and/or any task order) immediately, depending upon the funding available.
7. Final payment shall be paid by DEQ to Contractor in accordance with the time periods specified by state law, when: a) the work has been completed to DEQ's satisfaction; and b) the task order is fully performed.

ARTICLE 6. REPORTS. With each invoice, Contractor shall provide DEQ with a record of every application performed by either an applicator or operator under this Contract (or any task or work order). The Report shall, at a minimum, include:

1. The name of the applicator or employee applying the herbicide;
2. The date of application;
3. The time of application (be specific);
4. The location as described in the task or work order (must include the property owner's or lessee's name and address);
5. The county or counties where the herbicide was applied, and specific application site (township, range and section number) or by reference to local identifiable landmarks;
6. The equipment used (i.e., identify equipment as defined in RFP 414055 Attachment 1 – Price List): the same piece of equipment may be listed once and thereafter referenced. If more than one piece of equipment is used, they may be listed once by description and then by number;
7. The herbicide(s) and surfactant(s) used, with the company or manufacturer's name or trade name, or type of formulation;
8. The rate of application used, including the amount of diluent sprayed on an area (example: 1 pint of product / 5 gallons of water per acre);
9. The size of the area treated (acres, trees, square feet or yards, etc.);
10. The primary weeds targeted;
11. The vegetation treated (as defined in the task or work order); and,
12. The weather conditions at the time of application, such as the temperature, wind velocity and direction.

Contractor may be asked to mark simple maps (supplied by DEQ) describing where weed control activities were performed under this Contract (or any task or work order). Contractor shall provide these maps and any additional information about weed control activities as requested by DEQ.

ARTICLE 7. HEALTH AND SAFETY. Contractor is responsible for establishing the standards of safety for its employees, landowners, agency representatives, and invitees. In performing services under this Contract, Contractor agrees to comply with all applicable federal or state health or safety laws and regulations, including without limitation, the Montana Safety Act, including § 50-71-201, 202 and 203, MCA

Superfund remediation (cleanup) and abandoned mine reclamation sites, as well as other sites in Montana as identified by DEQ, to be addressed under this Contract for weed control services are sites where hazardous substances, pollutants and contaminants have been left on-site. However, in many cases, cleanup / reclamation will have already occurred on the areas where herbicide application is needed (i.e., the revegetated portions of the site), and risks associated with exposure to these hazardous substances, pollutants and contaminants may be less than the risks associated with the handling of herbicides and other safety issues associated with performing the work. Prior to the issuance of any task order, Contractor shall discuss site conditions with DEQ and become familiar with such conditions as they may affect health and safety in the performance of the work on both remediated and unremediated portions of the site.

ARTICLE 8. BONDS / RETAINAGE. No bonds will be required under this Contract. However, pursuant to Section 18-2-404 (2), MCA, at least \$1,000 of each task order under this Contract will be withheld until the completion of the task order. These monies are to be withheld to ensure Contractor's faithful performance under the provisions of the task order. Faithful performance shall include, without limitations, timely delivery of work products or services, compliance with the record keeping requirements, timely progress toward specified deadlines, and provision of all required work products and services in a satisfactory manner.

DEQ may decline to pay amounts so retained if, in DEQ's determination, Contractor fails to faithfully perform under the provisions of the task order. Prior to declining to pay retainage, DEQ shall provide Contractor with ten (10) working days written notice informing Contractor of DEQ's intent not to pay and documenting the basis for DEQ's determination of Contractor's nonperformance. DEQ and Contractor agree to use their best efforts to resolve any disputes concerning payment of monies retained. The amount of the retainage shall not constitute a measure of damages or a limit on damages to which DEQ is entitled for failure of performance or other breach by Contractor.

ARTICLE 9. MODIFICATIONS This Contract may not be enlarged, modified, or altered except by a written modification signed by DEQ and Contractor and attached to the original of this Contract. No handwritten change, addition or erasure of any printed portion of this Contract or on any task order issued pursuant to this Contract shall be valid or binding upon either party.

A change to any task order issued under this Contract may be authorized in the field by a written Work Order signed by DEQ and Contractor. The original of each Work Order shall be attached to the task order in DEQ's file. Copies will be provided to Contractor and DEQ representatives. The Work Order shall describe, at a minimum, the addition, deletion, or revision in the work described by the task order, any adjustments in the time for performance, deliverables, or costs. The Work Order shall also specify the agreed upon increase (if any) to the budget ceiling for the task order (not to be exceeded without prior written authorization). When the work under the task order is substantially complete, DEQ and Contractor will negotiate and execute a Modification to the Task Order rectifying any changes to the Task Order in accordance with the Work Order(s) issued.

ARTICLE 10. TERMINATION. This Contract may be terminated by either party in the event of default or by DEQ for its convenience as set forth below:

1. This Contract (or any task order or work order issued under this Contract) may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract (or any task order) through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for default, the parties shall have such rights and remedies as each would have against the other at law or in equity under the statutes, rules, and case law of the State of Montana. DEQ and Contractor agree that in the event either of them incurs any legal costs or attorney's fees whatsoever, each party shall pay its own legal costs and attorney's fees.
2. This Contract (or any task order) may be terminated in whole or in part in writing, by the DEQ for its convenience, provided that the Contractor is given: (1) not less than ten (10) calendar days' actual written notice of intent to terminate, and (2) an opportunity for consultation with DEQ prior to termination. The notice shall identify the date Contractor is to stop any or all of the work required under any task order(s) or work order(s). Upon termination for DEQ's convenience, Contractor shall be entitled to payment in accordance with this Contract (or any task order) for services rendered and expenses incurred by Contractor during the period prior to the effective date of termination.

ARTICLE 11. JURISDICTION AND VENUE. The laws of Montana govern this Contract. The parties agree that any litigation concerning this contract, unless the parties agree to arbitration or mediation, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and the parties consent to personal jurisdiction, subject matter jurisdiction, and venue in that court. Each party shall pay its own costs and attorney fees.

ARTICLE 12. MISCELLANEOUS.

1. Taxes/Permits/Fees/Applicable Laws. Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.
2. Labor/Materials/Equipment. Unless otherwise specified, Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, and services for the proper execution and completion of the work. Unless otherwise specified, all material and equipment provided shall be in good and operable condition. Prior to mobilization to a site to perform work under a task order, Contractor shall power wash (clean) all vehicles and equipment, including sprayers, wheels, undercarriages, fenders and the exterior body to prevent the spread of weeds on-site. This cleaning shall remove all soil, plant parts, seeds, vegetative matter, or other debris that could contain or hold seeds. Only equipment so cleaned and inspected by the DEQ or DEQ's designated representative will be allowed to operate within the work area. All subsequent move-ins of equipment to the work area shall be treated in the same manner as the initial mobilization. After work is completed on site, all vehicles leaving the site shall be power washed in the same manner as during mobilization to avoid spreading on site weeds off site. All workmanship shall be performed in accordance with the federal, state and industry standards for herbicide application.
3. Indemnification and Insurance. Contractor shall maintain for the duration of the contract, at its cost and expense, insurance at the limits and types required by DEQ for this Contract, against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, its agents, employees, and representatives.
 - a. **Hold Harmless and Indemnification:** Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, on account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts or omissions, negligent or otherwise, of Contractor, its agents, employees and/or assigns under this Contract.
 - b. **Contractor's Insurance:** **Insurance required under all sections herein shall be in effect for the duration of the contract.** Insurance required herein shall be provided by insurance policies issued only by companies currently authorized to do business in the state of Montana. No Contractor shall commence work under this Contract (or any task order hereunder) until all required insurance has been obtained and proof of insurance, in the form of certificates of insurance satisfactory to DEQ, have been delivered to DEQ.
 - c. Contractor shall carry **Workers' Compensation Insurance**, maintained at the limits required by statute. Such Workers' Compensation Insurance shall protect Contractor from claims made by its own employees, and also claims made by anyone directly or indirectly employed by Contractor.
 - d. Contractor shall carry occurrence coverage **Commercial General Liability Insurance** including coverage for premises, operations, independent contractor's protective, products and completed operations, broad form property damage, and comprehensive automobile liability insurance with not less than the following limits of liability: \$250,000 per occurrence; aggregate limit of \$500,000.
 - i. The Commercial General Liability Insurance shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this Contract, or operations incidental thereto, whether such work and operations be by Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts any of them may be liable.

ii. Contractor's liability insurance policies shall list DEQ as an additional insured. Should Contractor not be able to list DEQ as an additional insured, Contractor shall purchase a per occurrence Owner's / Contractor's Protective Policy (OCP) with DEQ as the insured party in the same occurrence and aggregate limited as indicated above for the Contractor's Commercial General Liability Policy.

iii. Contractor's insurance coverage shall be PRIMARY insurance as respects DEQ, its officers, elected and appointed officials, employees and volunteers. Any insurance or self insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not be attributable to it.

e. The insurance required under this Contract shall not be cancelled or materially changed unless Contractor provides at least thirty (30) days prior written notice to DEQ.

4. Gross Receipts Tax. Contractor is not performing public construction work it is defined in Section 15-50-101, MCA. Therefore, DEQ will not withhold 1% of his gross receipts for Contracts over \$5,000. Contractor should, if uncertain of legal requirements pertaining to the gross receipts tax, seek clarification from the Montana Department of Revenue.

5. Equal Employment Opportunity. All Contractor's hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

6. Record Keeping. Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to DEQ, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Contractor shall keep accounting records for a period of three years after completion and acceptance of any of the work under this Contract (including any extensions thereto) by DEQ.

7. Montana Prevailing Wage Rate Requirements. This Contract for weed control services is a contract for nonconstruction services. **Contractor must comply with the requirements for payment of wages set out in Title 18, Chapter 2, Part 4, MCA under this Contract.** The rates applicable to this Contract will generally be the rates specified for Nonconstruction, Pesticide Handlers (see Appendix A). Contractor agrees to pay required wage rates and comply with all other legal requirements for fringe benefits, hours and working conditions. The rates specified are minimum rates, and where the federal rate differs from the state rate, the higher of the two will be the required minimum. Bidder should, if uncertain of legal requirements or applicable rates for this project or certain categories of workers, seek clarification from the Montana Department of Labor and Industry (phone 406-444-5600 / email <http://erd.dli.mt.gov/laborstandard/wagehrprevail.asp>). If and when this Contract is extended, the prevailing wage rates in effect at the time of the extension will apply.

Under 18-2-406, MCA, Contractor must post in a prominent and accessible location at the site, not later than the first day of work, a legible statement of all wages to be paid to employees employed at the site. Under 18-2-423, MCA, any employees receiving an hourly wage are to be paid on a weekly basis.

Under 18-2-422, MCA, Contractor must maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for a period of not less than 3 years after the Contractor's completion of work on the project.

8. Federal Regulatory Requirements. This Contract is intended to be consistent with the regulatory requirements of 40 C.F.R. Part 35, Subpart O and the similar requirements of 43 C.F.R. Part 12. These regulatory requirements are hereby incorporated to the extent they are applicable and not in conflict with the specific provisions of this Contract.

CONTRACTOR:

Company

Date

Taxpayer's I.D. No. _____

Contractor's Registration Certificate No. _____

DEQ:

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

VICKI J. WOODROW
Contracts Officer
Financial Services
Metcalf Building
1520 E. Sixth Avenue, P.O. Box 200901
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Date

Approved for Legal Content:

DEQ Legal Counsel

Date